

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

TERRENCE ZEHRER,

Plaintiff,

v.

HARBOR CAPITAL ADVISORS, INC.,

Defendant.

Case No. 14-CV-00789

Consolidated

RUTH TUMPOWSKY,

Plaintiff,

v.

HARBOR CAPITAL ADVISORS, INC.,

Defendant.

Case No. 14-CV-07210

Honorable Joan Humphrey Lefkow

**MOTION OF DEFENDANT HARBOR CAPITAL ADVISORS, INC.  
FOR SUMMARY JUDGMENT**

Defendant Harbor Capital Advisers, Inc. (“HCA”), by and through its undersigned counsel, respectfully moves the Court pursuant to Rule 56 of the Federal Rules of Civil Procedure and Northern District of Illinois Local Rule 56.1 for the entry of an Order granting summary judgment in favor of HCA and against Plaintiffs Terrence Zehrer and Ruth Tumpowsky, and in support thereof states as follows:

1. The Consolidated Amended Complaint in this action purports to assert claims against HCA under Section 36(b) of the Investment Company Act of 1940, 15 U.S.C. §80-a 35(b), for HCA’s receipt of allegedly excessive investment management fees from two mutual funds, the Harbor International Fund and the Harbor High Yield Bond Fund (the “Funds”), for which HCA serves as the investment adviser.

2. To incur liability under Section 36(b), “an investment adviser must charge a fee that is *so disproportionately large* that it bears *no reasonable relationship* to the services rendered and *could not have been* the product of arm’s-length bargaining.” *Jones v. Harris Assoc. L.P.*, 559 U.S. 335, 346 (2010) (emphasis added).

3. In determining whether an investment adviser has “charge[d] a fee” so disproportionate to the services rendered by an investment advisor that it could not have been produced in arm’s-length bargaining, all services provided by the adviser must be considered. Here, Plaintiffs’ claims fail as a matter of law in that those claims do not take into consideration all the services provided to the Funds by HCA and all the expenses incurred by HCA in providing those services.

4. Plaintiffs’ claims fail for the additional, independent reason that the material facts, as to which there cannot be any genuine dispute, bearing upon the factors traditionally considered by the courts in applying Section 36(b) would not permit a conclusion that the management fees received by HCA from the Funds are “excessive.” In particular, because the fees at issue compare favorably to fees charged by other actively managed funds with similar investment strategies and the performance of the funds at issue was comparable to, or better than, other similar funds, the fees cannot be “so disproportionately large” as to bear “no reasonable relationship to the services rendered.” *Jones v. Harris Assocs. L.P.*, 611 F.App’x 359, 360-61 (7th Cir. 2015).

HCA’s Motion is supported by Defendant Harbor Capital Advisors, Inc.’s Statement of Material Facts As to Which There Is No Genuine Dispute, the Memorandum In Support of Motion of Harbor Capital Advisors, Inc. for Summary Judgment; and the Declaration of Nicole C. Mueller, together with accompanying exhibits, submitted herewith.

Wherefore, Defendant Harbor Capital Advisors, Inc. respectfully requests that the Court enter an Order granting Harbor Capital Advisors, Inc. summary judgment on the claims of Plaintiffs Terrence Zehrer and Ruth Tumpowsky.

Dated: September 8, 2016

Respectfully submitted,

DEFENDANT HARBOR CAPITAL  
ADVISORS, INC.

By: /s/ Stephen J. O'Neil  
One of its Attorneys

John W. Rotunno  
Stephen J. O'Neil  
Paul J. Walsen  
Clifford C. Histed  
Molly K. McGinley  
Nicole C. Mueller  
K&L GATES LLP  
70 West Madison Street, Suite 3100  
Chicago, Illinois 60602-4207  
Telephone: (312) 372-1121  
Facsimile: (312) 827-8000

Email: john.rotunno@klgates.com  
stephen.oneil@klgates.com  
paul.walsen@klgates.com  
clifford.histed@klgates.com  
molly.mcginley@klgates.com  
nicole.mueller@klgates.com

*Attorneys for Defendant Harbor Capital Advisors, Inc.*

**CERTIFICATE OF SERVICE**

This is to certify that on September 8, 2016, the foregoing **Motion of Defendant Harbor Capital Advisors, Inc. for Summary Judgment** was filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to following counsels of record:

Norman Rifkind  
LASKY & RIFKIND, LTD.  
100 E. Huron Street #1306  
Chicago, Illinois 60654

Stephen J. Oddo  
Edward B. Gerard  
Jenny L. Dixon  
ROBBINS ARROYO LLP  
600 B Street, Suite 1900  
San Diego, California 92101

Andrew W. Robertson  
Susan Salvetti  
Robin F. Zwerling  
Jeffrey C. Zwerling  
ZWERLING, SCHACHTER & ZWERLING, LLP  
41 Madison Avenue  
New York, New York 10010

Arnold C. Lakind  
Robert L. Lakind  
Daniel S. Sweetser  
Christopher S. Myles  
Mark A. Fisher  
Robert G. Stevens  
SZAFERMAN, LAKIND, BLUMSTEIN & BLADER, P.C.  
101 Grovers Mill Road, Suite 200  
Lawrenceville, New Jersey 08648

Marvin Alan Miller  
MILLER LAW LLC  
115 South LaSalle Street  
Suite 2910  
Chicago, Illinois 60603

/s/ Stephen J. O'Neil